IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.429 OF 1996

Shri Dattatraya Dagadu Kudale,)
Age 53 years, Occ:Agriculturist,)
R/at Kudale Vasti, Dhavane Mala,)
Jejuri, Taluka-Purandar,)
District - Pune.)
(Presently lodged in Central)
Prison, Yerawada, Pune.).. Appellant
(Org.Accused No.1)

Vs.

The State of Maharashtra.).. Respondent

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Mrs. Revati Mohite-Dere for the Appellant.

Shri B.H.Mehta, APP for State.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 14TH JULY, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. This appeal by a convict, who has been sentenced to suffer imprisonment for life and rigorous imprisonment for 5 years with fine for having murdered his wife and having given false information to police, seeks to challenge the judgment delivered by the learned Additional Sessions Judge, Pune, in Sessions Case No.349 of 1993 before him.

2. Facts which led to the prosecution of the appellant are as under:-

. Victim Sharda was daughter of one Jotiba Bapu Jadhav. She was initially married to one Kisan Shelar, who divorced her. On 2nd June, 1986, she married the appellant-Dattatraya Kudale, who was residing at Kudale Vasti near Jejuri with his brother Baban Dagadu Kudale and mother. The victim had no issue of this marriage. The victim started suffering ill-treatment on this count. The appellant also started expressing a suspicion about her character. For about a month and half before the incident, the victim was staying with her parents. Since, during this period, the appellant wrote letters questioning victim's stay with parents, on 28th March, 1993, the victim's father took her to matrimonial home. The appellant was found sitting in a shop at Jejuri where the appellant told victim's father that he did not want victim at matrimonial home. One of appellant's friends took out key of house from the pocket of the appellant and gave it to victim Sharda asking her to go home. Accordingly, Sharda entered the matrimonial home and her father returned to his own house.

3. According to the prosecution, appellant's

brother Baban held the victim and appellant inflicted blows by chisel on the victim, killing her. In the night between 29th and 30th March, 1993, one Khaire came and informed Jotiba that his daughter had died. He and his relatives rushed to the house of accused and found his daughter dead with an injury on her head. The accused had given report to police stating that his wife fell down and sustained injuries, as a result of which, she died. Police came to the spot and drew out a panchanama. Jotiba handed over letters written by the appellant to police. Police arrested the accused and interrogated him. The accused agreed to produce kopari and iron chisel used in commission of offence. These articles were accordingly seized. The police recorded statement of the witnesses, sent the seized property to Forensic Science Laboratory and on completion of investigation, sent the charge sheet to the learned Judicial Magistrate, First Class, Saswad, who committed the case to the Court of Sessions, on finding that the accused was involved in an offence triable exclusively by the Court of Session. Along with the appellant, his brother Baban Dagadu Kudale was also chargesheeted by police.

4. The learned Additional Sessions Judge, Pune, to whom the case was assigned, framed charges of offence punishable under Section 302 read with Section

34 of Indian Penal Code against both the accused, and offence punishable under Section 201 against the present appellant-Dattatraya, original accused No.1. The accused pleaded not guilty to the said charges and claimed to be tried, and therefore, they were put on trial.

5. In course of the trial, prosecution examined as many as 8 witnesses. When examined under Section 313 of the Code of Criminal Procedure, the appellant stated that on the incidental day, victim Sharda was cleaning utensils and was keeping utensils on a wooden plank fixed to a wall. In a short while, she came out trembling and fell down. When he tried to make her get up, he found that Sharda's head had bleeding injuries. He administered his own rustic first-aid and took her inside the house but she soon expired. He also stated that utensils which had fallen had been then arranged by his mother. Upon consideration of prosecution evidence in light of arguments advanced and defence raised, the learned Additional Sessions Judge, Pune, held that complicity of the accused No.2, the appellant's brother Baban Kudale, was not established and proceeded to acquit him of offence punishable under Section 302 read with 34 of Penal Code. He however proceeded to convict appellant - Dattatraya for having murdered Sharda and also for

giving false information to police in order to screen himself from legal punishment. The learned Additional Sessions Judge, Pune, proceeded to hand down the sentence as indicated above. Aggrieved thereby, the appellant has preferred the present appeal.

6. On behalf of the appellant, his learned counsel submitted that there is no dispute that victim died of injuries on her head as observed by P.W.1-Dr.Mane in his post-mortem notes at Exhibit-21. She however submitted that victim had not sustained those injuries by being hit by iron chisel, as made out by the prosecution case. She submitted that there was no motive on the part of the accused to commit any such ghastly act. She submitted that there was no dispute between the parties and the appellant had in fact accepted victim Sharda in matrimonial home. In the circumstances, she submitted that the defence version which had been raised to the level of probabilities ought to have been accepted by the learned Additional Sessions Judge, Pune.

7. In order to appreciate these submissions, we have gone through the entire evidence with the help of both, the learned counsel for the appellant as well as the learned Additional Public Prosecution. First, it

does not seem from the evidence tendered on record that there had been any reconciliation between the parties. It may be seen from the evidence of P.W.2-Jotiba, father-in-law of the appellant, that victim did not have any issue for about 7 to 8 years. It may be seen that P.W.3-Madhav Dada Bhise, who is from Jotiba's village, too stated that victim Sharda had complained to him that her husband and in-laws used to ill-treat her saying that she was barren. This had led to a discord.

8. P.W.2-Jotiba stated that his daughter was at the parental home for about 1 and half months soon before the incident. The witness had stated that on receipt of letters from his son-in-law, he sought to take his daughter back to the matrimonial home. His version about encounter with the appellant in a shop at Jejuri clearly shows continued antipathy of the appellant towards his wife, and this explains the incident which took place soon thereafter. It may be seen that P.W.2-Jotiba did not deny that the appellant had written to him that appellant's wife should be sent back, but, at the same time, he has stated about the encounter at Jejuri where the accused showed his reluctance to take victim back. Except for bare suggestion, there is nothing in the cross-examination of Jotiba to warrant a disbelief of this statement of

victim's father.

9. The incident on 29th March, 1993 took place in the house of the appellant. Obviously, only the members of the household of the appellant would witness the incident. According to the appellant, at about 8.00 p.m., the victim was washing utensils in front of the house. The appellant too was sitting in front of the house. He stated that his wife cleaned the utensils, took them inside the house, arranged them on a wooden plank and came out for cleaning remaining utensils. At that time, she felt giddy, fell down and started twisting her limbs. This account of the incident is given by the accused in his report at Exhibit-36 which was duly proved by P.W.7-Parbatrao Dhondiba Kengale.

10. It is one of the arguments on behalf of the appellant that the appellant had himself given report to a police and that this indicated his innocence. The fact of giving this report to the police is specifically put to accused No.1 in the form of Question Nos.21, 22 and 23 in his statement under Section 313 of Cr.P.C. The appellant had accepted the evidence in his behalf to be correct.

11. It has now to be found out whether this

account given by appellant at Exhibit-36 can be accepted in light of the medical evidence. P.W.1-Dr.Mane had observed as many as four surface wounds on the person of the deceased. In his post-mortem notes, Dr.Mane has described the injuries like contusion with abrasion frontal right side, C.L.W.on scalp lateral occipital temporal region, contusion with swelling on occipital region and C.L.W. below left parital sutured line. On internal examination, Dr.Mane found a crack fracture on occipital temporal region, depressed fracture at frontal region and two more contusions over right midline frontal region and on occipital region. Dr.Mane agreed that these injuries could be caused by hitting with hard and blunt substance like Article No.9 iron chisel before the Court.

12. In course of cross-examination, Dr.Mane undoubtedly admitted the possibility that injury No.2 would be caused if the person falls on the back of the head forcibly and Injury No.1 would be caused if heavy object falls on the head. Learned counsel for the appellant submitted that in face of Dr.Mane's acceptance of possibility of the two injuries being caused by fall of a person and fall of heavy object on the person, it would have to be concluded that the victim sustained injuries due to fall of utensils and

her own fall, as suggested by the accused.

13. The learned Additional Public Prosecution rightly submitted that Dr.Mane had specifically opined about the possibility of victim's sustaining injuries due to fall, and by his certificate Exhibit-24, he had categorically stated that these injuries could not have been caused by fall but could have been caused only by a hard and blunt weapon. It may be seen that the injuries are not only to the back of head but also to front and sides. Unless a person tumbles over a rocky slope or stairs, so many parts of skull would not be injured, and in that case, there will be injuries to other parts of body as well.

14. While spinning the story in his statement under 313 of Cr.P.C. to save himself, the accused forgot what he had stated to the police at Exhibit-36. After all the questions under 313 were put, the appellant chose to give a written statement. In his written statement, he stated that the victim had gone inside the house to arrange utensils on a wooden plank and came out of the house and fell down in the court-yard. In order to explain the fact that the utensils in the house were properly arranged when police performed panchanama, the accused explained that when Sharda was keeping utensils on a wooden

plank, one heavy utensil fell on Sharda's head, but his mother had re-arranged all the utensils on the plank. In his report at Exhibit-36, he had stated that his wife had arranged the utensils on the plank inside the house and had come out to clean remaining utensils when she fell. If Sharda had already sustained injuries inside the house because of utensils which fell on her head, she would have sustained bleeding injuries before she came out, there would also have been blood stains on the utensils concerned. The panchanama spot at Exhibit -37 does not however indicate any utensils having any stains of blood. This panchanama was performed by P.W.7-Kengale, soon after receiving the report from the accused. The recital in Exhibit-36 that the victim had herself arranged utensils on the wooden plank and the statement under Section 313 of Cr.P.C. that the utensils which had fallen had been kept by his mother on the plank show eagerness of the appellant to extricate himself from complicity in the incident. If there was any question of any utensils having fallen from the wooden plank, such wooden plank would surely have been noticed and specifically shown by accused when panchanama Exhibit-37 was being prepared. The panchanama mentions that utensils were along the wall and not on any wooden plank.

15. It is thus clear that eagerness of the accused to extricate himself from his assault on his wife led him to make statements which are at variance with each other. In course of investigation, the prosecution examined one Manik Zende (P.W.5). The witness stated that the accused had agreed to show the place where he had concealed iron chisel and his undergarment. Accordingly he took the police and panchas to a place near his house where he had concealed the articles under heap of fodder. These articles were accordingly seized by the police on 7th April, 1993 vide Exhibits -31 and 32. The witness admitted, and it is also apparent that signature of accused was not taken on Exhibits-31 and 32. He also admitted that the place where articles were concealed was open and accessible to all. He was curiously asked whether whole of iron chisel was wrapped in a paper or not, and he said that whole was not wrapped. The object of putting this question may have been to explain the stains of blood on chisel, in the report at Exhibit-44. The report shows that chisel, as also the victim's clothes, had stains of blood group "O". In any case, since the evidence about discovery is a weak piece of evidence and since the signatures of the accused were not obtained on Exhibits 31 and 32, we would ignore it.

16. In this case, chain of circumstances is

sufficiently established and unmistakably points to the guilt of the appellant. First, there is evidence of victim's father as also that of a neighbour speaking of victim's ill-treatment. Secondly, the evidence of victim's father indicates reluctance on the part of the appellant to take the victim back. Thirdly and most importantly, if the victim did sustain injuries by fall of utensils on her head, it is not clear as to why the appellant should have rushed to the police. This conduct of the appellant indicates a guilty mind. The story created by the appellant has been falsified by the evidence of P.W.1-Dr.Mane. The story is at variance with the one given in statement under Section 313 of Cr.P.C. In view of this, it seems that the victim's re-entry in the matrimonial home was not liked by the appellant and it led the appellant to get rid of the victim once for all, attempting to make it appear as if victim had sustained accidental injuries due to utensils falling on her head or due to her own fall.

17. The learned Trial Judge was right in concluding that the prosecution had proved that the appellant was guilty of murder of his wife. Report at Exhibit-36 given by the appellant to police was, to his knowledge, false. In order to screen himself from legal punishment, the appellant had given this false

information to police and, therefore, the learned Trial Judge was right in convicting the appellant of offence punishable under Section 201 of Penal Code as well.

18. In the result, on re-appreciation of the entire evidence on record, we affirm the conclusions drawn by the learned Trial Judge and uphold the conviction of the appellant for offence punishable under Sections 302 and 201 of Penal Code. We do not see any reason to interfere with the punishment imposed upon him. Consequently, the appeal fails and is dismissed. The appellant shall surrender to his bail. The learned Sessions Judge shall take steps to commit the accused to prison to serve out his remaining sentence.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)